

FINAL TEXT OF PROPOSED REGULATIONS

In the following, underline indicates added text, and ~~strike through~~ indicates deleted text.

3000. Definitions.

Section 3000 is amended to delete the definition below that is currently merged alphabetically with those that exist in the regulations.

*
*
*

~~Media representative means a print, wire service or broadcast reporter and their technical crew. A free-lance writer with assignment verification in the form of a letter from the represented outlet is also a media representative.~~

*
*
*

Note: Authority cited: Sections 2717.3, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 4570, 5009, 5054, 5068, and 7000 et seq., Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; and Section 11007, Health and Safety Code.

3261.1. Media Access to Facilities.

Subsections 3261.1 (a) and (a)(1) are amended to read:

(a) Access to a department facility or contract facility for a news media representative, as defined in subsection 3261.5(a)(1), ~~access to a department facility or contract facility~~ shall require prior approval of either the institution head or the Assistant Secretary of Communications or designee. Access to a department facility for a non-news media representative, as defined in subsection 3261.5(a)(2), shall require prior approval of both the institution head and the Assistant Secretary of Communications or their designees. For each request for access from a news media representative or a non-news media representative, the institution head or the Office of Public and Employee Communications shall provide an initial response back within two (2) working days. ~~Editorial researchers, free-lance writers without an outlet assignment verification, authors of books, film makers, or other persons may be authorized access to a facility only with approval of the institution head and assistant director, communications.~~ In order to deny an access request for a news media or a non-news media representative, the institution head shall secure advance authorization from the Secretary of the California Department of Corrections and Rehabilitation (CDCR) or designee.

(1) Facilities, on-duty staff, inmates or records under control of the department shall not be used in conjunction with film making, radio or television programs, or the writing of books, magazine articles or syndicated stories without prior approval of the ~~director~~ Secretary of the CDCR or designee.

New subsection 3261.1(a)(2) is adopted to read:

(2) Should any news media or non-news media representative(s) access to a facility constitute an immediate threat to safety and security, or generate serious operational problems, the institution head or designee may impose limitations on or set conditions for such access.

Subsection 3261.1(b) is amended to read:

(b) ~~Within a facility,~~ Except as provided by subsection 3261.5(b), news media and non-news media representatives within a facility shall be under the direct supervision of the facility's or regional ~~Public Information Officer~~ or their designee as determined by the institution head.

Subsection 3261.1(c) is amended to read:

(c) News Media and non-news media representatives shall not enter ~~security housing units, condemned units, the gas execution chamber,~~ or any area currently affected by an emergency situation without approval of the ~~director~~ Secretary of the CDCR or designee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 1798.20, 1798.30 and 1798.40–42, Civil Code.

3261.2. Authorized Release of Information.

(a) Only an employee designated by the institution head shall inform the media regarding a facility incident or newsworthy event.

Subsection 3261.2(b) is amended to read:

(b) Except as provided by applicable federal and state law, No person without written authorization of the affected individual shall disclose any protected health information that identifies an individual without a valid written authorization from the individual the name or other identifying information of any person as having Acquired Immune Deficiency Syndrome (AIDS) nor shall they disclose any person's blood test results to detect AIDS-related antibodies.

Subsection 3261.2(c) is amended to read:

(c) Information pertaining to a ~~CYA~~ Division of Juvenile Justice ward shall not be released to the media or the public, except as provided in subsection 3261.7(c)(3).

Subsection 3261.2(d) is amended to read:

(d) Information derived from a person's Criminal Identification and Investigations Report shall not be provided to the media or to the public.

Subsection 3261.2(e) is amended to read:

(e) Including the limitations of (c) and (d) above, the only inmate or parolee data which may be released without a valid written authorization from the inmate/parolee to the media or to the public includes the inmate's or parolee's:

- (1) Name.
- (2) Age.
- (3) Birthplace.
- (4) Place of previous residence.
- (5) Commitment information obtained from their adult probation officer's report.
- (6) Facility assignments and behavior.
- (7) General state of health, given in short and non-medical terms such as good, poor, or stable.
- (8) Cause of death.

Existing subsection 3261.2(e)(9) is deleted.

~~(9) Nature of injury or critical illness (unless the condition is related to the Acquired Immune Deficiency Syndrome).~~

Existing subsection 3261.2(e)(10) is renumbered 3261.2(e)(9) and is unchanged.

- ~~(10)~~ (9) Sentencing and release actions.

Subsection 3261.2(f) is amended to read:

(f) The only employee data which may be released to the media or to the public by other than the employee concerning their involvement in a facility incident or newsworthy event includes:

- (1) Name.
- (2) Civil service classification.
- (3) Age.
- (4) Work assignment.
- (5) Length of service with the department and/or current division or unit.
- (6) Past work assignments.
- (7) Role or function in a newsworthy event.

Existing Subsection 3261.2(g) is unchanged.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; ~~and s~~Sections 56.10, 1798.20, 1798.30 and 1798.40–42, Civil Code; Sections 6250-6276.48, Government Code; and Code of Federal Regulations, Title 45, Parts 160 and 164.

3261.4. Media Inquiries.

Section 3261.4(a) is amended to read:

(a) Media inquiries shall be given high priority; facts shall be gathered as quickly as possible and provided to the inquirer. If the requested facts are not known or are otherwise unavailable, the inquirer shall be so informed and the reasons therefore.

(b) No information developed to answer a media person's inquiry nor the fact that an inquiry was made shall be volunteered to another media person.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3261.5. Routine Media Interviews.

Existing subsections 3261.5(a) through (g) are renumbered 3261.5(f) through (l).

New subsections 3261.5(a) through (e)(3) are adopted to read:

(a) Definitions.

(1) "News media representative" means a journalist who works for, or is under contract to, a newspaper, magazine, wire service, book publisher, or radio or television program or station or who, through press passes issued by a governmental or police agency, or through similar convincing means, can demonstrate that he or she is a bona fide journalist engaged in the gathering of information for distribution to the public.

(2) "Non-news media representatives" means individuals in the publishing and broadcasting media not included in subsection 3261.5(a)(1), and may include editorial researchers, freelance writers, authors of books and independent film makers involved with the production of broadcast or print endeavors including, but not limited to, features, documentaries, commercials, and pilots for proposed news, or entertainment programs.

(b) News media and non-news media representatives shall be allowed to interview inmates in person in accordance with the visiting requirements of sections 3170 through 3176.3.

(1) No inmate or parolee may have his or her visitation limited or revoked solely because of a visit or potential visit from a news media or non-news media representative, nor may an inmate or parolee be punished, reclassified, disciplined, transferred to another prison against his or her wishes, or otherwise retaliated against, solely for participating in a visit by, or communicating with, a news media or non-news media representative.

(2) During an interview conducted pursuant to subsection 3261.5(b), news media and non-news media representatives shall be allowed to bring up to three (3) pens, three (3) pencils and one (1) pad of paper into the facility. These items shall be searched to protect against an immediate and direct threat to the security of the institution.

(c) Inmate telephone calls to news media and non-news media representatives shall be allowed in accordance with section 3282 and may be recorded by the media representative with the inmate's consent.

(d) Except as provided by subsection 3261.5(b), access by news media and non-news media representatives to department institutions, contract facilities and equipment requires prior approval pursuant to the provisions in subsection 3261.1(a).

(1) Non-news media representatives must provide proof of employment by a bona fide publication or production company, or have evidence that such a company has contracted to purchase the completed project prior to approval.

(2) Non-news media representative requests for access to departmental facilities, on-duty staff or inmates shall include project and production details as necessary to determine security and operational impacts.

(3) Non-news media representative film productions require a California Film Commission permit, along with evidence of financial responsibility and liability insurance of at least \$1 million indemnifying and defending the State of California, its offices, employees and agents against any lawsuits.

(e) News media and non-news media representatives may be allowed access to security housing units and administrative segregation with the prior approval of the institution head.

(1) Access to any secured area where lethal weapons are maintained requires the prior approval of the institution head.

(2) The institution head may allow access to an area outside the secure perimeter of a facility to news media representatives.

Existing subsections 3261.5(a), (a)(1), and (a)(2) are renumbered to (f), (f)(1), and (f)(2) with (f) and (f)(2) amended to read:

~~(a)~~ (f) News media and non-news media representatives may be permitted random face-to-face interviews with inmates or parolees housed in facilities under the jurisdiction of the department, and random or specific-person face-to-face interviews with staff. Such interviews shall be conducted as stipulated by the institution head, including restricting the time, place and duration of interviews, and size of technical crews.

(1) Random interviews of individuals involved in a specific activity or program, or encountered while covering a facility activity or event shall be limited to the time, areas and segments of the facility population designated by the institution head.

(2) Inmates may not participate in specific-person face-to-face interviews except as provided in subsection 3261.5(b).

Existing subsection 3261.5(b) is renumbered to 3261.5(g) and is amended to read:

(~~bg~~) Use of cameras or recording equipment shall require prior approval of the institution head or designee. Photographs, films or video recording of inmates shall be allowed in accordance with section 3261.7.

Existing subsections 3261.5(c) and (d) are renumbered to (h) and (i) respectively with (h) amended to read:

(~~eh~~) The news media and non-news media representatives or their organization(s) may be required to pay the security or escort costs provided for the interview.

(~~di~~) No inmate, parolee or staff shall be interviewed against their will.

Existing subsection 3261.5(e) is renumbered to (j) and is amended to read:

(~~ej~~) CDCR Form 146 (Rev. ~~7/94~~ 06/08), Inmate Declaration To News Media Contact, shall be completed whenever an inmate is the subject of an interview, still photograph, motion picture or other recording intended for use by a television or radio station, or newspaper, magazine or other publication.

Existing subsection 3261.5(f) is renumbered to (k) and is amended to read:

(~~fk~~) One employee shall witness the inmate's signature on the completed CDCR Form 146.

Existing subsection 3261.5(g) is renumbered to (l) and is amended to read:

(~~gl~~) Inmates under 18 years of age shall not be photographed, filmed or video ~~taped~~ recorded.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code, and *Pell v. Procunier*, 94 S.Ct. 2800 (1974).

3261.7. Cameras and Other Audio or Visual Recording Devices.

Subsections 3261.7(a) and (b) are amended to read:

(a) Staff cannot prohibit a person who is not on facility property from photographing, filming, ~~video~~ ~~taping~~ videotaping or otherwise recording any department facilities, employees, inmates, parolees or equipment.

(b) Persons are prohibited from interrupting, interfering or communicating with an inmate being transported or working off facility grounds without prior authorization of the staff person in charge or institution head.

Subsections 3261.7(c) and (c)(1) are amended to read:

(c) Photographs, films or ~~video tapes~~ videotapes for other than department purposes which reveal an inmate's identity may be taken within a facility subject to the following conditions:

Subsection 3261.7(c)(1) is amended to read:

(1) A CDCR Form 146 (Rev. 06/08) shall be completed for each inmate before a photograph, film or ~~video tape~~ videotape identifying the inmate may be taken.

(2) An inmate's consent is not required where individuals in such settings as an exercise yard or dining hall are not singled out or where the inmate's identity is not revealed; however, before such shots are taken, inmates shall be advised so those who do not want to be recognized may turn away or leave the area.

Subsection 3261.7(c)(3) is amended to read:

(3) Photographs, films or ~~video tapes~~ videotapes revealing the identity of an inmate committed to the ~~California Youth Authority (CYA)~~ Division of Juvenile Justice shall not be made available other than for official purposes such as an escape.

Subsections 3261.7(d), (d)(1), and (d)(2) are amended to read:

(d) Unless there is a specified threat of imminent danger to an inmate or parolee by releasing their departmental identification photograph, news media representatives as defined in subsection 3261.5(a)(1) and non-news media representatives as defined in subsection 3261.5(a)(2) shall be permitted access to ~~identification~~ photographs without the inmate's or parolee's consent.

(1) News media and non-news media representatives shall pay for the facility's cost to provide such requested departmental identification photographs.

(2) Current departmental identification photographs of escaped inmates and parolees at large shall be provided without charge.

(e) Possession of any camera or other recording device within a facility is prohibited unless specifically authorized by the institution head.

Subsection 3261.7(f)(2) is amended to read:

(f) No camera or other recording device shall be permitted within the execution chamber area.

(1) Photographs or any other audio or visual recordings of an execution are prohibited.

(2) Media photography, filming or ~~video taping~~ videotaping of the execution chamber is prohibited; however, stock department photographs and ~~video tapes~~ videotapes of the area are available upon request.

Subsection 3261.7(g) is unchanged.

Subsection 3261.7(h) is amended to read:

(h) Any photographs, film, video tape or other recording taken within facilities in violation of these regulations shall be seized and placed undamaged, undeveloped and unviewed in a secure area. The news media or non-news media representative's supplies and equipment shall not be damaged.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4570, 4570.1 and 5054, Penal Code.

3267. Access of Public Officials to Facilities.

(a) A public official, except as provided in (b) below, of another governmental department or agency who needs to interview staff or inmates or to conduct an inspection shall request permission of the institution head at least 24 hours before the date and time of their desired arrival, stating the purpose of the proposed visit. Upon their arrival, the official's access shall be subject to the following requirements:

- (1) The official shall be required to produce their picture identification and consent to a search.
- (2) The official shall be escorted by staff at all times within the facility's security area.
- (3) Any equipment required by the official shall be searched and under the control of staff while it is within the facility's security area.

Subsection 3267(b) is amended to read:

(b) An elected state official's access may be denied only during an emergency with the approval of the director's Secretary of the California Department of Corrections and Rehabilitation ~~approval~~. Access by the guests or staff of such officials may be denied when they have not been previously approved by the institution head.

New subsection 3267(c) is adopted to read:

(c) In cases of immediate need, and upon notification by the Secretary in writing, any prohibitions regarding access to inmates by public officials, their guests or staff may be suspended to assist in the interest of public understanding of departmental operations and responsibilities.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.